



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/098,620

03/18/2002

Jeremy C. Rosenberg

2917-117

3143

6449

7590

09/28/2007

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

1425 K STREET, N.W.

SUITE 800

WASHINGTON, DC 20005

EXAMINER

FORD, GRANT M

ART UNIT

PAPER NUMBER

2141

NOTIFICATION DATE

DELIVERY MODE

09/28/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary

Application No.

10/098,620

Applicant(s)

ROSENBERG ET AL.

Examiner

Grant Ford

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 32-35 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8-7-07, 7-25-07, 4-24-07, 3-19-07.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-35 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims and 1-4,6-10,16-21,23-26,29-30,and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke et al. (6,587,127), hereinafter referred to as Leeke in view of Ward (6,526,411):

- a. As per claims 1 and 18, Leeke discloses a method and system comprising the steps of:

receiving a broadcast sound recording over a broadcast audio channel

(Col 13 lines 58-62);

playing the received broadcast sound recording so that a user can listen to the received broadcast sound recording (Col 13 line 63 through Col 14 line 11);

Art Unit: 2141

receiving an indication from the user that the user likes the received broadcast sound recording (Col 13 line 63 through Col 14 line 11). However, Leeke fails to explicitly teach the use of dynamic playlists associated with personalized channel profiles.

Ward teaches storing one or more audio channel profiles (Figure 2 element 18);

associating each of the one or more audio channel profiles with a personalized audio channel, wherein the audio channel profile associated with a personalized audio channel is used to select the sound recordings that are played for the personalized audio channel (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20 through 40); and

modifying at least one of the one or more audio channel profiles in response to receiving the indication that the user likes the received broadcast sound recording (Col 8 lines 20-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dynamic profiles and playlists with the broadcast audio system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64).

b. As per claims 2 and 19, Leeke and Ward teach the invention substantially as claimed above. However, Leeke fails to explicitly teach modifying the audio channel profiles.

Ward teaches wherein said at least one of the one or more profiles includes a set of one or more sound recording identifiers, and the step of modifying said at least one of the one or more audio channel profiles comprises the step of adding a sound recording identifier that identifies the received broadcast sound recording to said set of sound recording identifiers included in the at least one profile (Col 2 lines 18-25, Col 2 lines 46-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of modifying audio channel profiles with the broadcast audio system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of defining relationships between a user's preference towards a respective content item and dynamically modifying a playlist accordingly (Col 2 lines 54-60).

c. As per claims 3 and 20, Leeke and Ward teach the invention substantially as claimed above. However, Leeke fails to explicitly teach modifying audio channel profiles.

Ward teaches wherein said at least one of the one or more profiles includes a set of one or more artist identifiers, and the step of modifying at least one of the one or more audio channel profiles comprises the step of adding an artist identifier that identifies the artist that recorded the received broadcast sound recording to said set of artist identifiers included in the at least one profile (Col 4 lines 52-58). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of modifying audio

Art Unit: 2141

channel profiles with the broadcast audio system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of defining relationships between a user's preference towards a respective content item and dynamically modifying a playlist accordingly (Col 2 lines 54-60).

d. As per claims 4 and 21, Leeke additionally discloses the step of enabling the user to specify the degree to which the user likes the sound recording (Col 35 lines 48-50).

e. As per claims 6 and 23, Leeke additionally discloses the step of receiving information about the received broadcast sound recording (Table III, Col 44 lines 48-65).

f. As per claims 7 and 24, Leeke and Ward teach the invention substantially as claimed above. However, Leeke fails to explicitly teach modifying audio channel profiles.

Ward teaches selecting one or more of the audio channel profiles based on the received information concerning the received broadcast sound recording and wherein the step of modifying at least one of the one or more audio channel profiles comprises the step of modifying at least one of the selected profiles (Col 2 lines 18-25 and 46-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of updating plural profiles in response to feedback associated with a received sound recording with the broadcast audio system of Leeke. One of ordinary skill in the art would have been done so for the purpose of updating

Art Unit: 2141

meta-data for users who indicate feedback regarding a received recording (Col 2 lines 46-53).

g. As per claims 8 and 25, Leeke additionally discloses wherein the information concerning the sound recording indicates a genre to which the sound recording belongs (Col 19 lines 66-67, Col 20 lines 1-11).

h. As per claims 9 and 26, Leeke additionally discloses the step of storing the broadcast sound recording in a cache as the broadcast sound recording is being received (Col 48 lines 38-47, Col 49 lines 12-21).

i. As per claim 10, Leeke additionally discloses providing a means for enabling the user to provide an indication that the user would like to obtain a copy of the broadcast sound recording (Col 14 lines 40-42).

j. As per claims 16 and 29, Leeke discloses retrieving a selected sound recording (Col 35 lines 16-19);

playing the selected sound recording so that the user can listen to the sound recording (Col 35 line 48);

receiving a broadcast sound recording so that a user can listen to the broadcast sound recording (Col 35 lines 16-19);

enabling the user to indicate that the user likes or does not like the broadcast sound recording (Col 35 lines 48-50). However, Leeke fails to explicitly teach selecting, in response to the received indication, a sound recording specified in the playlist or modifying at least one of the one or more profiles in

Art Unit: 2141

response to the user indicating that the user likes or does not like the broadcast sound recording.

Ward teaches using the information in one of the profiles to create a playlist, wherein the playlist specifies a set of sound recordings (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20-40);

associating the playlist with the personalized audio channel that is associated with the profile used to create the playlist (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20-40);

selecting, in response to the received indication, a sound recording specified in the playlist (Col 2 lines 18-25 and 46-60); and

receiving from the user an indication that the user desires to listen to the personalized audio channel (Col 8 lines 20-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of personalized audio channel profiles with the broadcast audio system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of defining relationships between a user's preference towards a respective content item and dynamically modifying a playlist accordingly (Col 2 lines 54-60).

k. As per claims 17 and 30, Leeke additionally discloses the step of storing the broadcast sound recording in a cache as the broadcast sound recording is being received (Col 48 lines 38-47, Col 49 lines 12-21).

Art Unit: 2141

l. As per claim 32, Leeke additionally discloses enabling a user to create a new audio channel profile without requiring the user to input any user identifier (Col 6 lines 29-36).

m. As per claim 33, Leeke and Ward teach the invention substantially as claimed above. However, Leeke fails to explicitly disclose creating first and second audio channel profiles with separate music artists, songs, and/or genre of music.

Ward teaches enabling a user to create a first audio channel profile that specifies at least one artist, song and/or genre of music and a second audio channel profile that specifies at least one artist, song, and/or genre of music, wherein the second audio channel profile specifies at least one artist, song, and/or genre of music that is not specified in the first audio channel profile (Col 3 lines 21-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of separate music profiles between users with the broadcast audio system of Leeke. One of ordinary skill in the art would have done so for the purpose of providing a profiles based off of a seed (Col 3 lines 21-30).

n. As per claim 34, Leeke and Ward teach the invention substantially as claimed above. However, Leeke fails to explicitly teach the use of a personalized audio channel being used to select all sound recordings that are played for the personalized audio channel.

Ward teaches wherein the audio channel profile associated with a personalized audio channel is used to select all of the sound recordings that are played for the personalized audio channel (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dynamic profiles and playlists with the broadcast audio system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64).

o. As per claim 35, Leeke and Ward disclose the invention substantially as claimed above. However, Leeke fails to explicitly teach creating a playlist based upon information contained in one of the channel profiles.

Ward teaches creating a playlist based upon information contained in one of the channel profiles (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dynamic profiles and playlists with the broadcast audio system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64).

Art Unit: 2141

4. Claims 5 and 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke and Ward in view of Hempleman et al. (6,243,725) hereinafter referred to as Hempleman.

a. As per claims 5 and 22, Leeke fails to explicitly disclose modification of a selected profile or profiles. Ward teaches modifying a selected profile or profiles (Col 8 lines 20-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dynamic profiles and playlists with the broadcast audio system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64).

Hempleman teaches requesting a user to select at least one audio channel profile in response to receiving an indication (Figure 3o, Col 6 lines 14-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of selecting a profile to modify with network based playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of writing changes to a playlist to a database (Figure 3o, Col 6 lines 14-22).

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke and Ward in view of Mankovich et al. (2003/0097338) hereinafter referred to as Mankovich.

a. As per claim 11 Leeke teaches determining whether the user may obtain a copy of the broadcast sound recording in response to the user providing an indication that the user would like to obtain a copy of the broadcast sound recording (Col 23 lines 60-66, Col. 24 lines 15-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of a purchase option with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing a user to possess a legal copy of a selected broadcast sound recording (Col 14 lines 40-44).

Mankovich teaches copying a sound recording from a cache to a non-volatile storage medium if it is determined that the user may obtain a copy (Para. 0030). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of transition from a cache to a non-volatile storage medium with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing download of digital copies of content upon purchase request (Para. 0030).

6. Claims 12-14 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke and Ward in view of What is LAUNCHcast? (hereinafter referred to as Launchcast).

Art Unit: 2141

a. As per claims 12 and 27, Leeke discloses receiving a broadcast sound recording over a conventional broadcast audio channel (Col 35 lines 16-19);

playing the sound recording so that a user can listen to the broadcast sound recording (Col 35 line 48); and

enabling the user to indicate that the user likes or does not like the broadcast sound recording (Col 35 lines 48-50). However, Leeke fails to explicitly teach modifying personalized audio profiles.

Ward teaches playing a set of sound recordings, wherein the set of sound recordings matches the profile associated with the selected personalized audio channel (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, and Col 8 lines 20-40); and

modifying at least one of the two or more audio profiles in response to receiving user feedback (Col 2 lines 15-39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dynamic profiles and playlists with the broadcast audio system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64). However, Ward fails to explicitly teach displaying a user interface to enable a user to select between personalized audio channels and receiving an indication that a user would like to utilize a selected one of the two or more personalized audio channels.

Launchcast teaches a user interface to enable a user to select between personalized audio channels and receiving an indication that a user would like to utilize a selected one of the two or more personalized audio channels (Page 1 – see LAUNCHcast Stations). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of listing multiple personalized audio channels with the broadcast audio system of Leeke. One of ordinary skill in the art would have done so for the purpose of provided a quick and simple way to access multiple personalized stations (Page 1).

b. As per claims 13 and 28, Leeke additionally discloses the step of storing the broadcast sound recording in a cache as the broadcast sound recording is being received (Col 48 lines 38-47, Col 49 lines 12-21).

c. As per claim 14, Leeke additionally discloses providing means for enabling the user to provide an indication that the user would like to obtain a copy of the broadcast sound recording (Col 14 lines 40-42).

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke, Ward, and Launchcast in view of Mankovich.

a. As per claim 15 Leeke additionally discloses determining whether the user may obtain a copy of the broadcast sound recording in response to the user providing an indication that the user would like to obtain a copy of the broadcast sound recording

Art Unit: 2141

(Col 23 lines 60-66, Col. 24 lines 15-16). However, Leeke fails to explicitly disclose copying a sound recording from a cache to a non-volatile storage medium if it is determined that the user may obtain a copy.

Mankovich teaches copying a sound recording from a cache to a non-volatile storage medium if it is determined that the user may obtain a copy (Para. 0030). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of transition from a cache to a non-volatile storage medium with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing download of digital copies of content upon purchase request (Para. 0030).

Allowable Subject Matter

8. Claim 31 remains objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Grant Ford whose telephone number is (571)272-8630. The examiner can normally be reached on 8-5:30 Mon-Thurs alternating Fridays.

Art Unit: 2141

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571)272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gmf



ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER